IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 199 of 2003 (S/B)

Ashutosh Negi
S/o Dr. G.S. Negi, Vidya Sadan,
Near Circuit House, Pauri Garhwal. …… Petitioner

Versus

H.N.B. Garhwal University & others ……. Respondents

Hon. P.C. Verma, A.C. J.
Hon. Rajesh Tandon, J.

This writ petition has been filed by the petitioner seeking a writ of mandamus commanding the respondents to consider the candidature of the petitioner for appointment as Lecturer (Tourism) in the University and to pay the salary to the petitioner for which he had worked since August, 2002.

Heard Mr. V.B.S. Negi, learned counsel for the petitioner and Mr. L.P. Naithani, learned Senior Advocate.

In the H.N.B. Garhwal University, vide advertisement dated 14.11.2000, two posts of Lecturer for Tourism Department were advertised. One post was for reserved category candidate and one for general category candidate. The petitioner was one of the applicant. He also appeared before the Selection Committee. As per provisions of Section 7(a), the Selection Committee has to recommend, one or more but not more than three, names for each post. Accordingly, a panel of three names was prepared by the Selection Committee and recommendation was sent for appointment of the candidate whose name appeared at serial No. 1, namely, Mr. Rakesh Dhodi and he was given appointment. In said penal, the name of the petitioner stood at serial no. 2. The penal exhausted in view of the appointment of Mr. Rakesh Dhodi. University created one post under the self-financing scheme in order to meet the requirement of teaching to the students and the petitioner was given appointment against that post on the

fixed emoluments of Rs. 10,000/- per month as his name stood at serial No. 2 in the penal of selection held.

A post of Lecturer in Tourism has fallen vacant for regular appointment according to Section 31 of the U.P. Universities Act as one Dr. S.K. Gupta, who was working as Lecturer in the Tourism Department from a long time was appointed to the post of Reader. The petitioner has filed this writ petition seeking a writ of mandamus to command the respondents to consider the candidature of the petitioner for appointment as Lecturer (Tourism) in the University against his post on the ground that he is entitled to be appointed in view of Clause b of sub-section 3 of Section 31 of the U.P. State Universities Act, 1973, which reads as under:

> *"31(3)(b) Where before or after the commencement of this Act, any teacher is appointed (after reference to a Selection Committee) to a temporary post likely to last for more than six months, and such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant or any post of same cadre and grade is newly created or falls vacant in the same department, then unless the Executive Council or the Management, as the case may be, decides to terminate his services after giving an opportunity to show cause, it may appoint such teacher in a substantive capacity to that post without reference to a Selection Committee:*
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> *Provided that this clause shall not apply unless the teacher concerned holds the prescribed qualifications for the post at the time of such substantive appointment, and he has served continuously, for a period of not less than one year after his appointment made after reference to a Selection Committee:*
>
> *Provided further that appointment in a substantive capacity under this clause of a teacher who had served, before*

such appointment, continuously for a period of less than two years, shall be on probation for one year which may be extended for a period not exceeding one year, and the provisions of sub-section (2) shall apply accordingly."

The claim of the petitioner, based on clause b of sub-section 3 of Section 31, is misconceived as the petitioner does not fulfil the ingredients as given so as to attract clause b of sub-section 3 of Section 31 as the petitioner is not appointed and working against any post advertised after recommendation of the Selection Committee and that said post has not been subsequently converted into a permanent one. This is a post, which is created on account of promotion of Dr. S.K. Gupta after the appointment of the petitioner. The case of the petitioner does not fall in any of the categories mentioned in Section 31(3)(b) of the U.P. State Universities Act, 1973. Therefore, we do not find any merit in this writ petition.

The writ petition is devoid of merit and is, hereby, dismissed. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 20.05.2004.

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